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‘Soft Regulation’ – Travesty of the Real Thing or New Dimension?

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ABSTRACT

In recent years there has been a considerable growth in the amount of, and interest in, forms of ‘soft’ regulation in industrial relations. Although also important at national level, ‘soft’ regulation is one of the main manifestations of the ‘Europeanisation’ of industrial relations. This paper reviews the nature and extent of ‘soft’ regulation in that has emerged within industrial relations within both national systems and at the international and European levels. It examines the reasons for the emergence of ‘soft’ regulation, emphasising the importance of the increasing complexity of collective bargaining and the role that ‘soft’ regulation plays in dealing with the collective action problem. It also highlights the importance of the devolved implementation which ‘soft’ regulation facilitates in the context of the spread of a ‘contract culture’. A preliminary assessment is reached of the key issues which ‘soft’ regulation has raised in academic and policy debates. At EU-level, as the extent and forms of ‘soft’ regulation continue to accumulate, clarification of the roles of the cross-sector, sector and company levels is required. National systems continue to have an important role in turning ‘soft’ into ‘hard’ regulation.

1. INTRODUCTION [1]

In recent years there has been a considerable growth in the amount of and interest in so-called 'soft' regulation in industrial relations, including 'joint opinions, declarations, resolutions, recommendations, proposals, guide-lines, codes of conduct, agreement protocols and agreements proper' (European Commission, 2000a: 17). The trend for what the European Commission (1997: 14) describes as 'flexible frameworks' rather than 'compulsory and rigid systems' is evident at single employer, sector and national multi-sector levels in many countries. Recent European Foundation studies of agreements dealing with employment and competitiveness, for example, found widespread use of framework agreements not only at national sector but also at company level (Sisson and Artiles, 2000; Zagelmeyer, 2000; Freyssinet and Seifert, 2001). The conclusion of social pacts between the national social partners, and in some instances government, in several EU countries in recent years has received considerable attention (Pochet and Fajertag, 2000). Especially noteworthy, however, has been the development of 'soft' regulation that is cross-national in its coverage. Examples at European level include the joint texts and framework agreements concluded by some European Works Councils (Carley, 2000) and the burgeoning volume of joint opinons, recommendations and in one or two instances framework agreements emerging from the EU's sector social dialogue (European Commission, 2000). Bench marking and peer group review have also become prominent as the EU's employment policy guidelines have been developed Goetschy, 2001; Keller, 2001). The spread of soft regulation is also discernible at a broader international level, including the recent revision of the OECD guidelines for multinational companies (MNCs), the proliferation of individual MNCs corporate codes of conduct (see *European Works Council Bulletin*, 2000, Nos. 27 and 28) and the attempts to promote employment standards in NAFTA (see Teague, 2000).

[1] This paper is part of the research project on 'Emerging Boundaries of European Collective Bargaining at Sector and Enterprise Levels', Award Ref L213252040, within ESRC's 'One Europe or Several?' Programme.

Our main reason for raising the issue is that, along with co-ordinated (or 'arms-length') bargaining (for further details, see Sisson and Marginson, 2000), 'soft' regulation can be seen as one of the main manifestations of the 'Europeanisation' of industrial relations. It is also pretty controversial. In Keller's (2000: 38) words, two main schools of thought may be identified: the 'Euro-pessimists' and the 'Euro-optimists'. Briefly, since the viewpoints will be considered in greater detail below, the former, which includes Keller himself (Keller, 2000; 2001; see also Streeck, 1995), argues that 'soft' regulation does not deal with the key issues of social policy, its contents are rather limited and the great majority are not binding. 'Euro-optimists', on the other hand, see 'soft' regulation as a more positive development (see, for example, Kenner, 1995; 1999; Teague, 2000). It has made it possible to begin to resolve the seemingly intractable problems of the boundary between national and transnational jurisdictions through a regulatory method which provides from both 'community and autonomy' (Falkner, 1998: 152); also to emphasise topics that may have been down played in national regulation. Furthermore, in establishing horizontal forms of standards setting, which can be the basis for continuous improvement, they are contributing significantly to what Teague (2000: 8) has described as 'the socialisation undercarriage of the European integration process'.

The aims of the paper, which is one of a number of outputs from the 'Emerging Boundaries of European Collective Bargaining at Sector and Enterprise Levels' project being undertaken as part of the UK Economic and Social Research Council's 'One Europe or Several' programme, are reflected in its structure. The paper begins by reviewing the nature and extent of the 'soft' regulation that has emerged both within national systems and at the international level. Our focus is on industrial relations, and important recent developments in employment policy are not covered in any detail. It then goes on to try to understand better the reasons behind the emergence of 'soft' regulation in industrial relations, emphasising the importance of the increasing complexity of collective bargaining and the key role that 'soft' regulation, like co-ordinated bargaining, plays in dealing with the collective action problem. The paper concludes with a preliminary assessment of some of the key issues raised and a consideration of the main policy implications.

2. THE NATURE AND EXTENT OF 'SOFT' REGULATION

'Soft' versus 'hard' regulation

So what is 'soft' regulation? There is no widely accepted definition of 'soft' regulation any more than there is of the 'hard' regulation with which it is very often compared. Both terms are also typically used without any attempt to explain what is meant. Arguably, different forms of regulation are best thought of as being arrayed along a continuum running from 'soft' to 'hard'. There is no easy dividing line between 'soft' and 'hard' regulation as legal analysts such as Kenner (1999) and Biagi (2000) have recognised. Implicit in the notion of 'soft' regulation, however, tend to be a number of inter-related contrasts with 'hard' forms, set out below, which helps us to begin to understand what is involved.

- 'soft' regulation tends to deal with general principles, whereas 'hard' regulation is concerned with specific rights and obligations

- 'soft' regulation, where it does deal with rights and obligations, tends to be concerned with minimum provisions, whereas the equivalent 'hard' regulation involves standard ones

- 'soft' regulation often provides for further negotiation at lower levels, whereas 'hard' regulation tends to assume the process is finished - following French usage, 'hard' regulation might be described as *parfait* or *complete* and 'soft' regulation as *imparfait* or *incomplete* (for further details, see UIMM, 1968: 94)

- 'soft' regulation relies on *open-ended processes* such as bench marking and peer group audit, with monitoring and 'moral-suasion' for enforcement, whereas 'hard' regulation tends to rely on *sanctions*

- 'soft' regulation, in as much as it takes the form of 'recommendations' or 'opinions' or 'declarations', might be described as *permissive*, whereas 'hard' regulation is almost invariably *compulsory*

- ‘soft’ regulation tends to be concerned with *soft* issues such as equal opportunities or training and development, whereas ‘hard’ regulation deals with *hard* ones such as pay and working time

Clearly, then, the concepts of ‘soft’ and ‘hard’ regulation are not completely watertight. It is very much a question of degree. For instance, regulation dealing with general principles, but establishing no mechanisms for monitoring implementation, is softer than where some kind of provision is made for monitoring through an open-ended process. Moreover, specific forms of regulation may have both a ‘soft’ and a ‘hard’ dimension. Framework agreements may, for example, bind the parties to a specified minimum standard but leave implementation of the standard, and even variation of the standard under certain circumstances, to subsequent negotiations at another level. Also clear is that ‘soft’ and ‘hard’ regulation can be a feature of both *national* and *international* systems. Contrary to the impression sometimes given, in other words, ‘soft’ regulation is not the exclusive province of international systems any more than ‘hard’ regulation is of national ones.

The national dimension

Considering national systems against this background, most employment regulation, be it in the form of laws or collective agreements, has historically been of the ‘hard’ variety. For example, the *standard* or *minimum* provisions dealing with pay or working time in multi-employer agreements, which have been the predominant pattern in most EU member countries, have been characterised as very specific, automatic in their effect and compulsory. Yet many rules in these agreements have always had a soft dimension in their application. For example, in the areas of payment by results or training or the harmonisation of conditions between manual and non-manual employees, multi-employment agreements have typically made provision for further negotiation in the workplace. Indeed, it was to capture this distinction that the terms *parfait* and *imparfait* referred to above were coined more than 30 years ago. Even softer have been the rules of *principle*, such as a statement of the employers' right to manage or a commitment on the part of trade unions and their members to improve productivity. Here there has been an intention that something should

happen in the workplace. Unlike the other types, however, the rule of principle is not specific in its application and not easy to enforce.

No hard data are available on the extent of 'soft' regulation in national systems. It is pretty safe to conclude, however, that there has been a significant growth. The authoritative report which Supiot (1999: 145-6) and his colleagues prepared for the European Commission reminds us that there has been a shift in emphasis from 'hard' to 'soft' in the case of legal regulation in many countries. It is not just that more issues are being decided by collective bargaining, more of which below, or that the content of legislation is very often determined by collective bargaining (*lois négociés*). Even where legislation deals with an issue, it very often does so in the form of establishing a general principle, leaving the social partners the responsibility for the details. Or it explicitly authorises the conclusion of collective agreements (*accords dérogatoir*) that can depart from its provisions in ways that provide for variation as well as improvement.

In the case of collective bargaining, there is a widespread consensus that most EU countries have experienced within their national systems what has been described as 'centrally co-ordinated decentralisation' (Ferner and Hyman, 1992: xxxvi) or 'organised decentralisation' (Traxler, 1995). An important recent feature of collective bargaining, variously described as 'opening clauses' (Germany) or 'discount dauses' (Italy), are the provisions giving the individual employer a degree of flexibility, through negotiation with their own employees, in applying the collectively agreed standards at sector level. In the case of metalworking in Germany, for example, 'opening clauses' have created the option to deviate from the uniform and binding standards of the sector agreements in areas such as working time and pay. Bispinck (1998: 119) distinguishes two parallel overlapping variants of 'adaptations':

- differentiation: implementation of differing collectively agreed standards for certain groups of employees, enterprises or parts of branches; and

- lowering of collectively agreed standards: uniform reduction of collectively agreed provisions and payments for all employees of one enterprise.

The increase in activity at the cross-sector level in most countries has also contributed to the stock of 'soft' regulation. Many national level agreements, understandings and joint opinions are essentially recommendations to negotiators at sector and company levels. In Visser's (1998: 306) words, discussing the situation in the Netherlands, 'Central accords are not instructions which must be applied but guidance to lower-level negotiators with considerable "moral" weight'.

The EU dimension

A mix of 'hard' and 'soft' regulation is also to be found at the EU levels, albeit the balance is very much in favour of the latter. As Streeck (1995: 45-46) observes:

> what really distinguishes the emerging European social policy regime from traditional national ones is its low capacity to impose binding obligations on market participants, and the high degree to which it depends on various kinds of voluntarism. In particular, supranational European social policy, as a product of both intergovernmental constraints and sometimes inventive attempts especially by the Commission to work around these, tries to enlist the subtle, cajoling effects of non-binding public recommendations, expert consensus on 'best practice', explication of the common elements of national regimes and mutual information and consultation (governance by persuasion); offers actors, public and private, menus of alternatives from which to choose (governance by choice); and hopes to increase the homogeneity of national regimes through comparison by electorates of their situation to that of citizens in other countries (governance by diffusion).

At the risk of over-simplification, four main types of EU regulation may be identified. The first, 'hard' regulation, takes the form of one-size-fits-all legislation such as the directives dealing with health and safety. The second combines a hard and a soft dimension – examples include the European Works Council Directive and the Working Time Directive, both of which give the social partners considerable flexibility in implementing the provisions through collective agreements. The third involves an essentially soft dimension and embraces so-called 'framework agreements' and 'joint recommendations', which are intended to incite negotiations at lower levels, but which are normally neither binding on lower levels nor, indeed, on the parties themselves. For example, most of the joint texts that have so far emanated from European Works Councils fall under this heading. Also within this category, but arguably softer still, are the 'codes of

conduct', 'joint opinions', joint declarations' and 'joint communications which characterise much of the output from the sector social dialogue. The fourth category is also 'soft' and takes the form of the so-called 'open co-ordination method' of the EU's employment strategy. Although beyond our present scope, this involves putting national employment policies to the test of national comparison, targets to be reached within a specified timetable and peer group review, that is scrutiny by a wide range of EU institutions and subject to their recommendations (see Goetschy, 2001).

The EU cross-sector level

In terms of social legislation, the European Commission (2000a: 24) reminds us that the *acquis communautaire* is now considerable, affecting key areas of industrial relations and social protection. It goes on to suggest that the development of such legislation may be divided in to six periods, details of which will be found in Figure 1. As has been widely recognised (see, for example, Sciarra, 1995, Dølvick, 2000; Keller, 2000; Wendon, 2000), there has been a marked switch in emphasis in the last three periods from 'hard' to 'soft' regulation. In its Green Paper (European Commission, 1997: 14-5), *Partnership for a new organisation of work*, the Commission itself talks approvingly of 'the likely development of labour law and industrial relations from rigid and compulsory systems of statutory regulations to more open and flexible legal frameworks'. The most tangible signs are the greater role for social dialogue and collective bargaining provided for in the Maastricht Treaty which entered in to force in 1993, the commitment to the principle of subsidiarity contained in the Amsterdam Treaty of 1997 and, anticipating implementation of the latter with its new employment title, the adoption of the employment policy guidelines following the extraordinary Luxembourg summit of 1997.

As for collective regulation at the cross-sector level, 'soft' regulation is very much the order of the day, the new possibilities envisaged by the Maastricht Treaty notwithstanding. The European Commission (2000a: 20) records that there have been 34 'joint texts' since the start of the so-called Val Duchesse process in 1985. The full list is shown in Figure 2. Of these, it will be seen that only one was designated as an 'agreement' – the original agreement between the social

partners on their role in framing regulation in the social policy sphere, which underpinned the social chapter to the Maastricht Treaty. Three instances were 'framework agreements', which were subsequently given legal status as directives – on parental leave, part-time working and fixed-term, temporary employment. Seven texts were 'declarations' or 'joint declarations'; and 17 were 'joint opinions'. In addition, the texts included one case each of 'proposals'; 'joint statements'; 'joint publications'; 'joint contributions'; 'joint recommendations'; and 'compendia of good practice'.

The three framework agreements, subsequently adopted as directives, themselves take the second of the three regulatory forms identified above, combining hard and soft dimensions and thereby giving national legislators as well as the social partners considerable flexibility in implementing the provisions. Although innovatory in nature, the limited scale of the development of negotiated legislation at the cross-sector level suggests that the post-Maastricht era has hardly ushered in the qualitative shift towards harder forms of regulation implied by the Commission's own recent commentary (2000:8): 'The 'joint opinions' period has thus gradually given way to the negotiation of European framework agreements'. Indeed if anything, as Figure 2 shows, joint opinions have themselves proliferated over the same period.

The EU sector

'Soft' regulation predominates even more so at the EU sector level, where the social dialogue has recently been renewed on the basis of 22 sector committees for social dialogue, replacing the previous joint committees and working groups. In total, the European Commission (2000a: 17) estimates that there have been more than 150 'joint texts', with a doubling over the last ten years in what the Commission describes as 'dialogue productivity' from 0.7 to 1.4 texts per sector per annum. The distribution by sector is very uneven. Leading the way have been telecommunications, agriculture, rail and postal services, all of which have registered 20 or more joint texts. Noticeable by their absence are the main manufacturing industries, such as chemicals and metalworking, where in the face of employer recalcitrance there is no sector social dialogue (Keller and Sörries, 1999b) and hence no joint texts of any kind.

So far, however, there have been very few 'agreements' – the exceptions being framework agreements dealing with working time in agriculture (1997), rail transport (1998) and sea transport (1998), plus an agreement on guidelines for teleworking in the commerce sector (2001). Of these, the framework agreement in agriculture is not binding on the constituent affiliates in the different member states, and it has been implemented in only a few (Keller and Bansbach, 2000: 303). The framework agreements in rail and sea transport close gaps in the coverage of the 1993 Working Time Directive and have been given legal force via a directive under the procedures of the social chapter of the Amsterdam Treaty. The recently concluded agreement in the commerce sector establishes guidelines for regulating telework through collective agreements, and other arrangements, at national and company levels. The agreement is not binding, but implementation is to be monitored in a transparent manner by the sector-social dialogue committee (EIRO, 2001). The vast majority of texts have taken the form of 'joint opinions', 'recommendations' or 'codes of conduct'; neither are these binding on the parties themselves, nor do they require their constituent affiliates at national level to take action to implement them. In the words of Keller and Sörries (1999b: 335), 'these joint opinions are purely declarations of intent'. There also appears to have been little monitoring of the implementation of these texts.

Unlike the cross-sector level, where most texts deal with employment or employment-related matters, only around 50 per cent of sector joint texts have been so concerned, the other half concentrating on the business or commercial position of the sector in response to proposals or initiatives of the Commission. Of those dealing with social and employment related matters, the issues addressed are predominantly so-called 'soft' ones such as training, employment, working conditions and health and safety (Keller and Sörries, 1999b: 334).

The Euro-company level

Here the main catalyst has been the 1994 European Works Council (EWC) Directive. According to the European Commission (2000a: 15), by mid-2000 more than 600 MNCs had reached agreements with representatives of their employees to establish an EWC. And, as yet small, number of EWCs have gone

on themselves to agree joint texts. Analysing fourteen such texts, concluded by eight EWCs, Carley (2000) notes considerable variation in the 'softness' of the regulation provided. In some instances, the texts spell out general frameworks for company policy – as at Suez-Lyonnaise des Eaux and Vivendi – with no indication as to how their implementation will be effected or monitored. In others, they commit the signatories to specific actions – such as the establishment of a health and safety observatory at ENI. A further group take the form of framework agreements for lower level action, with a crucially important distinction between those that are permissive, inciting follow-up at lower levels – such as Danone's 1996 agreement on training and Vivendi's 1999 agreement on safety – and those that are obligatory on the parties at lower levels. Of the latter, the agreements coming closest to traditional 'hard' collective agreements are those concluded during 2000 by the EWCs at Ford and GM dealing, respectively, with the status, rights and, in Ford's case, terms and conditions, of employees being transferred into the Visteon spin-off and to a new power train joint venture with FIAT.

Of note also is that, whilst 'soft' issues such as training, equal opportunities and employment policy, are prominent amongst the subject matter addressed by these jointly agreed texts, 'hard' issues including contract status, working time and terms and conditions are also in evidence. Context is important too, with half the texts analysed addressing issues arising as a result of company restructuring (Carley, 2000).

The wider international dimension

Recent years have seen fresh developments, at different levels, in forms of soft regulation concerned with employment and industrial relations matters on the wider international scene. Codes of conduct drawn up by international organisations which address aspects of industrial relations are of course nothing new, dating back to the 1970s. The OECD guidelines for multinational companies, which include an employment and industrial relations chapter, were originally adopted in 1976; the ILO's tripartite declaration on social policy in multinational companies dates back to 1977 and the UN has been attempting to conclude a code of conduct for multinationals since the same year. In June

2000, however, revised OECD guidelines for multinational companies and strengthened procedures for securing their implementation were adopted. In the employment and industrial relations chapter, new provisions relate to abolishing child and forced labour and strengthened provisions relating to discrimination and employee information and consultation (EWCB, 2000 No.29). A month later, under the auspices of the UN, 50 of the world's largest corporations signed a 'global compact' which commits them to observing nine principles, including upholding the right to association and recognition of the right to collectively bargain, abolition of child labour and elimination of discrimination at work (*Financial Times*, 28 July 2000).

Renewed activity within intergovernmental organisations reflects both the burgeoning number of codes of conduct adopted within individual MNCs, specifying standards and goals for the company's conduct across the globe, and growing debate around the insertion of 'social clauses' into international trade agreements. Whilst fundamental disagreements between industrialised and developing nations over the inclusion of clauses on labour standards makes any new regulation on these matters through the World Trade Organisation an unlikely prospect in the immediate future, new regulatory measures have been put in place within the main trading blocs of the North Atlantic Free Trade Area (NAFTA) and, rather more so, the EU to limit the scope for social dumping (Teague, 2000).

Many of the growing number of codes of conducted adopted by MNCs, either drawn up unilaterally or negotiated with trade unions or other employee representatives (such as works councils), address employment and industrial relations issues. These include child and forced labour, health and safety, freedom of association and the right to collective bargain, levels of wages and anti-discrimination. A 1998 ILO study identified 215 international codes which identified labour issues, of which over 80 per cent were individual company codes (*European Works Council Bulletin,* 2000, No.27). There is considerable variation in the provisions made for the implementation of these corporate codes. EWCB (2000, No. 27) reports that of the company codes covered by a 1999 OECD study, 38 per cent made no provision at all for monitoring implementation through such means as inspections, visits and control procedures. Amongst

those that do make provision, the overwhelming majority (59 per cent) specify some form of internal monitoring and just 3 per cent provide for some form of external monitoring, for example by an independent agency. Codes that apply to contractors and sub-contractors to the MNC often require the contractor/sub-contractor to confirm in writing that the terms of the code will be observed, although the extent of subsequent monitoring is unclear. Enforcement measures, specified in barely a majority of codes, include termination of the contract and working with the contractor/sub-contractor to address any breach identified. Unsurprisingly, provisions for monitoring and other means of implementation and enforcement measures are markedly more likely to be specified in codes agreed with trade unions or works councils than those adopted unilaterally (EWCB, 2000, No. 28).

Finally, although the prime impetus has been at company level, EWCB (2000, No.28) cites a number of recent developments at international sector level, where trade unions and employers' organisations have concluded agreements and other joint texts establishing codes of conduct on employment matters, including a 1996 agreement aimed at implementing ILO labour standards in the production of FIFA-approved footballs world-wide and a 1999 joint statement on child labour in the tobacco growing industry.

3. ACCOUNTING FOR 'SOFT' REGULATION

The glib explanation for the emergence of 'soft' regulation is that employers will not accede to trade union demands for 'hard' regulation. It is certainly true that employers, above all at EU levels, are reluctant to contemplate such regulation. Yet it is by no means a sufficient and/or complete explanation. A major consideration is growing social and economic complexity stemming from the twin processes of differentiation and interdependency. As Chouraqui (1998) reminds us, it is not just a question of a secular increase in complexity or the continuous acceleration in the rate of change. The signs are that the rapid development of what he refers to as 'dynamic complexity' is not a temporary phenomenon involving a transition from one fixed state to another, but a permanent one, with significant destabilising effects for traditional patterns of regulation. Also, as Majone (1996) and his colleagues recognise, far from ushering in a period of deregulation or less regulation, many recent developments have resulted in the exact opposite. Paradoxically, for example, privatisation, which has been regarded as the epitome of deregulation, has brought about a significant increase in regulation (Brown, 2001a; 2001b). The development of the EU has also been a major consideration. According to one Danish MEP, the number of EU legal acts in force rose from 1,947 in 1973 to 23,027 in 1996; the number of pages produced by the EU Publications office more than doubled to 1.9 million in the seven years to 1996 (quoted in Brown, 2001a).

Especially contributing to this complexity in the case of employment regulation is the spread of what has been termed the 'contract culture' (Supiot, 2000: 321), reflecting the growing importance of market principles in decision making. In concrete terms, this means a shift in the balance of emphasis from law to the individual contract of employment and the collective agreement. In Supiot's (2000: 341) words:

> In face of the commercial contract, which is becoming internationalised, we then have to accommodate the entire contractual panoply which has accompanied decentralisation, regional development policy, agricultural policy and employment policy. In labour law this evolution has meant a decentralisation of the sources of law: from statute law to collective agreement, from industry-level agreement to company-level agreement to individual contract of employment.

Coping with complexity

The complexity of issues that policy makers and practitioners have to deal with is an important consideration in its own right in understanding the growth of 'soft' regulation. Put simply, many of the 'new' issues they have to confront do not lend themselves to 'hard' regulation in the same way that pay and working time, say, do. Take one of the issues highlighted in the Supiot report (1999)–the use of collective bargaining to link employment and competitiveness. Figure 3, which draws on the detailed case studies of the European Foundation's recent investigation into so-called 'pacts for employment and competitiveness' (PECs) (Sisson and Artiles, 2000), gives some idea of the range of subjects that can be included at the company level. Clearly, some issues can be the subjects of 'hard' regulation such as new working time arrangements or the amount of investment into a particular unit. Other issues are much more difficult to pin down in the same way, however. This would be true, for example, of commitments to flexibility and continuous improvement or the involvement of employee representatives in the organisation's planning for the future. In both cases delegation of the responsibility for implementation to lower levels, more of which below, can mean that the company level provisions are deliberately 'soft' in their definition.

Also critical, to introduce the typologies of Walton and McKersie (1995), is that such arrangements very often involve a mix of integrative as well as distributive bargaining. In other words, not only do they involve complicated trade-offs but also the development of a culture of on-going problem-solving. For example, the UK correspondents for the European Foundation's study quote both senior managers and shop stewards from Blue Circle Cement in contrasting the 'old way' of handling redundancies with the 'partnership way' in which the plant closures have been dealt with reflecting the spirit of the 'Way Ahead' agreement. Previously, 90 days' notice of the redundancies would have been given in line with statutory requirements and formal consultation carried out with recognised unions, but there would have been no offers of redeployment and all employees would have been made redundant. As a result of the partnership agreement, however, detailed discussions at all levels within the company have taken place about the way in which the closures would be handled and the consequences for

the employees concerned. Warren (1999: 14-5) cites the initiatives taken by the 'Company-wide Action Team', involving shop stewards and managers, following the announcement of the closure of two workplaces in 1999 involving the loss of 250 employees:

> Meetings were held at both sites to allow employees to raise their concerns, and a programme was developed for those who wished to remain with Blue Circle. Training was stepped up to allow all employees to develop computer skills and update their qualifications. An allowance of £300 could be used for any training the company itself could not provide.
>
> These efforts were supplemented by a generous relocation package, financial advice, and a programme for those unable to relocate. Local companies were invited to see for themselves the skills and experience that Blue Circle employees had to offer, backed by job fairs, advertising and a video. Finally, consultants were engaged to help with CVs and interviewing skills.

Patently, it would have been impossible to cater in advance in a collective agreement for the detail of such developments. The point is that the 'soft' regulation of an initial collective agreement has encouraged a process of on-going collective bargaining, embodying a commitment to the principles of partnership, flexibility and employment security. This process may or may not give rise to written collective agreements, but it does produce tangible results that reflect the considerable influence of employee representatives.

It is at the international level, however, that the complexity of objects interacts with the complexity of levels to exaggerate the problem. Thus, in the case of EU regulation, it can be argued that governments have recognised the dangers of unfettered 'regime competition' and the need both to put a human face on EMU and modernise the labour market. Yet, at the same time, as a number of authors remind us, (see, for example, Scharpf, 2000; Wendon, 2000), instead of responding to the problem of 'declining domestic governability' by going for greater EU regulation, member states have done more or less the exact opposite – they have been loathe to concede authority in the social policy field, seeing it to be of continuing importance in domestic electoral support. Lack of the necessary authority has, in turn, made the job of getting EU agreements of any kind extremely difficult to achieve.

It is not just a matter of sovereignty, however. There are immensely practical difficulties at the international level, which the resort to 'soft' regulation helps to overcome. Keller (2000: 36), one of its critics, recognises that 'soft' regulation is 'more realistic and easier to achieve' because conflicts of interest are easier to settle'. Especially difficult to deal with is what has been described as the 'regulatory conundrum' (Rhodes, 1995: 80), that is the conflict between the 'upward harmonisation' and 'minimum standards' approaches to EU regulation. Those with the lowest standards have inclined to avoid 'upward harmonisation' for fear of the impact on their competitiveness, while those with more advanced provision have tended to press for alignment for defensive reasons. Patently, if the standards are set too high, the danger is non-compliance. Equally, if they are set too low, those in higher standard countries are likely to see little point. Indeed, they may oppose EU regulation for fear it will undermine their own position. At the very least, resort to 'soft' regulation helps the 'north' from levelling down and the 'south' from levelling up.

In more theoretical terms, the argument is very similar to that which the authors have elaborated in connection with co-ordinated bargaining (Sisson and Marginson, 2001). In any social relationship where collective action is an issue the negotiating process assumes considerable significance in understanding the outcomes that emerge. Two main dimensions of such collective action may be identified. In the case of two individuals, it is simply the horizontal that is involved – A has to reach some accommodation with B and vice versa. In the case of the relationship where A and B involve more than two individuals, however, there is a vertical as well as a horizontal relationship: the groups comprising A and B have to reach some accommodation among themselves about how they are going to deal with the other. Other things being equal, the greater the complexity, the greater the collective action problem.

'Soft' regulation, like co-ordinated bargaining, has great advantages in helping to deal with both the horizontal and vertical dimensions. It makes it possible for the principals to set a sense of direction and yet to avoid failures to agree over the details that often bedevil negotiations on the horizontal dimension. At the same time, by delegating responsibilities to representatives at lower levels to tailor

solutions to their immediate situation, it helps to relieve the collective action problem on the vertical dimension.

The spread of a contract culture

Two developments are especially noteworthy here. The first is the increase in the issues or objects of collective bargaining, leading to so-called 'proceduralisation', that is the tendency to divest laws of substantive rules, which tend to be 'hard' in form', in favour of rules on negotiation, which tend to be 'soft'. This is a tendency that has always been evident in the UK, where collective bargaining has long been rather minimalist in addressing a substantive agenda, emphasising instead the establishment of procedural rules. To paraphrase the Supiot report (1999: 140-7), in many countries collective bargaining has traditionally been seen primarily as a means of improving on the legal status of employees. Increasingly, however, it has come to assume a wider range of functions. Thus, as well as taking over some of the legislative function of the state, collective bargaining has been given greater responsibility for implementing legal provisions (that is a regulatory function) and has also become an instrument of adaptability (that is a flexibility function). In some cases, it has even involved employees in economic decision-making within the company (that is a management function), recalling the emphasis of some of the pioneers of the study of industrial relations on collective bargaining as a rule-making process or *joint regulation* (see, for example, Dunlop, 1958; Slichter, Healy and Livernash, 1960; Flanders, 1970).

The second is a generalisation of contractual vocabulary and much of the thinking associated with business practice. The result is a considerable shift of emphasis in the key assumptions, subjects and processes of industrial relations, which Figure 4 tries to capture in contrasting the 'old' and the 'new' paradigms.

One aspect is the attack on regulation or 'red tape', to use the more pejorative term, which business is waging in virtually every country and every sphere of activity (for further details, see Brown, 2001a and b). Governments are under considerable pressure to regulate only where there is no alternative. Devices such as 'sunset' clauses, which ensure that legislation lapses unless it is

explicitly extended, are being canvassed along with the exclusion of SMEs. Voluntary alternatives, such as codes of practice and the peer group review associated with some forms of benchmarking, are also being strongly pushed.

Also important is the example of the divisionalisation, budgetary devolution and marketization that increasingly characterise the large company. As Ferner and Hyman (1998: xvi) very perceptively recognise, the decentralisation of collective bargaining has 'strong parallels – possibly not altogether accidental – with the widespread pattern of co-ordinated devolution of managerial responsibilities that has taken place within large corporations in recent years'. In a phrase, the large corporations is 'decentralised operationally, but centralised strategically' (Whittington and Mayer, 1994).

The 'managed autonomy', which the authors (Marginson and Sisson, 1996: 177) have suggested sums up the way the modern corporation is run, has strong parallels with the 'regulated autonomy' to be found in theories of so-called 'reflexive law'. Essentially, 'reflexive law' represents an attempt to find a balance between heteronomy and autonomy, that is central regulation, on the one hand, and deregulation, on the other. In discussing 'reflexive law' Barnard and Deakin's (2000: 341) more or less put our earlier argument within a legal discourse (see also Supiot, 2000: 340-41):

> The essence of reflexive law is the acknowledgement that regulatory interventions are most likely to be successful when they seek to achieve their ends not by direct prescription, but by inducing 'second-order effects' on the part of social actors. In other words, this approach aims to 'couple' external regulation with self-regulatory processes. Reflexive law therefore has a *procedural orientation.* What this means, in the context of economic regulation, is that the preferred mode of intervention is for the law to underpin and encourage autonomous processes of adjustment, in particular by supporting mechanisms of group representation and participation, rather than to intervene by imposing particular distributive outcomes.

Examples cited by Barnard and Deakin include the Working Time Directive and the European Works Councils Directive. The first empowers trade unions and employers to make qualified exceptions to limits on working time. The second gives management considerable latitude to negotiate appropriate mechanisms for transnational information and consultation with employee representatives.

The authors go on to remind us that,

> The whole social dialogue process which was initiated by the Maastricht Treaty is, of course, reflexive harmonisation writ large. Perhaps its most distinctive aspect is the creation of an institutional procedure which operates through self-regulation by the two sides of industry, but is also transnational in character. It operates beyond the level of individual member states, rather than either above or below them. The framework directives which have emerged so far from the social dialogue process are good examples of 'negotiated law'. Not only do they result from a process of transnational negotiation, but they also envisage local-level implementation through collective bargaining or similar methods of joint regulation at industry or plant level.

As already indicated, it is not just the law that is being affected, however, but also collective bargaining. Subsidiarity is as important within national systems as it is between them. Typically, the higher the level at which a collective agreement is reached, the more likely it is to take the form of a framework agreement or *accord cadre*, wherein much of the regulation is of the *incomplete* variety. Indeed, a key rationale of much of the higher level activity — indeed, it is the very essence of 'organised decentralisation' — is to lay the way for more detailed negotiations at lower levels that can embrace 'hard' regulation tailor-made to the specific circumstances of individual units.

As an illustration, take the banking sector in Belgium, which is generally regarded as a country with one of the most centralised set of collective bargaining arrangements of EU countries. The recent working time agreement makes provision for a reduction in annual hours from 1780 to 1620. It was up to management and the *délégation syndicale* in individual banks how they implemented this. Thus, in some cases there were agreements translating the reduction into extra holidays rather than reduced weekly working hours, whilst in others the basic working week was reduced. Similarly, the sector agreement on pay allows a great deal of flexibility, notwithstanding the need to take into account the tripartite level indexation process at national level. The ways in which the total amount money is actually paid is up to the banks themselves in discussion with the *délégation syndicale*.

Similar developments have been taking place in large companies made up of a number of business units and/or workplaces. Thus, the European Foundation

PECs study found widespread use of enterprise framework agreements leaving detailed implementation to individual business units within a single enterprise. An excellent example is Air France's 'Accord Pour un Développement Partagé. This has been publicised as an agreement trading off a reduction in working time against the creation of 4,000 new jobs in line with the *Loi Aubry*. Essentially, however, it is a framework agreement (*accord cadre*). Critically, as Mériaux (1999) reminds us, the achievement of this objective depends on local agreements in 26 establishments dealing with the flexibility of working time *and* work organisation.

4. A PRELIMINARY ASSESSMENT

There is not yet sufficient evidence to evaluate the impact of 'soft' regulation. In the circumstances, our focus here is on some of the criticisms that have been directed at 'soft' regulation, above all in the EU context, together with some of the key issues raised.

'Minimum' rather than 'standard' provisions?

It is true that 'soft' regulation deals essentially with minimum provisions, which means that its contents at EU level can be rather limited in comparison with already existing national regulation in some countries (Keller, 2000: 38). In the light of the previous discussion, however, it was unrealistic to expect anything else in the case of EU regulation: the alternative, 'upwards harmonisation', was never a serious prospect.

It is also the case that, at least so far as some countries are concerned, 'soft' regulation has made it possible to extend collective bargaining to issues that were not widely dealt with at national level. In some of these areas, such as equal opportunities, working time and health and safety, arguably very considerable progress has been made. Here the minimum standards entailed by 'soft' regulation can have a significant effect. Indeed, in its impact 'soft' regulation can be tantamount to 'hard' regulation, the directive on working time the obvious case being the UK.

More generally, it must be stressed that the equation of 'soft' regulation with minimum provisions and 'hard' regulation with standard provisions is not watertight and depends very much on country. Thus, while there may be a strong tradition in Germany of 'hard' regulation providing for standard provisions, this is the exception amongst European countries rather than the rule. Even in Germany, some provisions of sector agreements tend to be treated as a minimum framework in large companies, as the evidence of wage drift clearly shows.

'Soft' regulation dealing with 'minimum' provisions can also play an important role in encouraging company-level negotiations that improve on them. A number of the PECs are clear proof of this with perhaps the clearest examples to be

found in Spain. In incorporating provisions for the shift from temporary to permanent jobs, each of the agreements at La Caixa, Essa, Ford, Sony and Damm was in effect implementing the provisions of higher level agreements reached at the national level in 1997. Indeed, our Spanish respondents suggests that the these company agreements might be described as 'improvement pacts' in as much as they are able to go beyond the provisions of higher level agreements (Artiles and Alós-Moner, 1999).

'Soft' rather than 'hard' issues?

Another criticism of 'soft' regulation is that it does not deal with 'hard' issues such as pay. This is certainly true of the EU level. Yet this is not a property of 'soft' regulation – the exclusion of pay, along with the issues of collective representation and action, is the result of a deliberate decision of the Council of Ministers, which was re-affirmed in the 1997 Treaty of Amsterdam. At the cross-sector and sector levels within national systems, it has proved possible to have 'soft' regulation dealing with 'hard' issues. For example, as already indicated in the case of the banking sector in Belgium, many sector agreements have become 'softer' in the treatment of not only working time but also pay. It is also not unusual to give negotiators at company levels considerable flexibility in the application of agreements dealing with these issues.

'Soft' and 'hard' regulation are also not necessarily mutually exclusive. 'Soft' regulation can lead to very 'hard' results. These can either be in the form of explicit collective agreements at lower levels, as in the case of the shift from temporary to permanent jobs in Spain. Or they can be in the form of the process of collective bargaining, as in the case of Blue Circle Cement cited earlier.

Non-binding and therefore ineffective?

It is true that, at the EU levels especially, much 'soft' regulation is not binding for the signatory parties' (Keller, 2000: 38). It also appears to be more difficult to enforce than collective agreements commonly associated with national systems of collective bargaining – 'the Commission has no institutions or instruments of its own to implement existing regulation' (Keller, 2000: 42).

The situation is not quite as straightforward as this, however. In two countries, Ireland and the UK, there is a long history of 'voluntarism' in industrial relations, which extends to seeing collective agreements binding in honour only. Furthermore, it does not necessarily follow that because an agreement is a legal contract it is more likely to be implemented. There is evidence of a great deal of non-compliance. Even in countries such as Germany there is growing evidence to suggest that not all companies comply with the pay and/or working time provisions of legally enforceable sector agreements (Hassel and Schulten, 1998: 505-7). The idealised picture of the national system that some commentators have in mind is not a helpful bench mark.

Moreover, implementation does not necessarily rely on the presence of regulatory instruments. Take for example the process under the Dutch Wassenar Agreement of 1982. As Visser (1998: 300-1) explains, since it was concluded there have been some 70 agreements, understandings and joint opinions emanating from the Foundation for Labour which is one of two main forums for multi-sector social dialogue. Many of the Foundation's agreements, understandings and joint opinions, which are usually couched in general terms, are essentially recommendations to negotiators at sector and company levels, who have the opportunity to adapt them to their particular circumstances. These central accords do not take the form of instructions which must be applied, but of guidance to lower-level negotiators which carry considerable "'moral' weight" (Visser, 1998: 306).

Also important are the 'new' forms of enforcement that soft regulation involves. Perhaps most obviously there is the 'naming and shaming' associated with benchmarking.[2] This can involve the 'open method of co-ordination' of the EU's employment policy guidelines; the monitoring of equal opportunities practice against statements of policy and targets within organisations (Colling and Dickens, 1998) or the more public process associated with ethical retailing

[2] One of us attended a recent seminar attended by a senior official of the UK Treasury, who spoke from personal experience about what it felt like to be involved in international bench marking with peer group review. He said that, like many people, he had been somewhat scornful about the 'naming and shaming' as a method of enforcement. Having been personally exposed to the process, however, he could vouch for its impact. It was not at all a comfortable position, he pointed out, for senior officials and ministers of governments to be put in the dock in such a public way.

campaigns involving companies such as Nike or Addidas (Donaldson, 2000). As Teague (2000) observes, these new forms often make it possible to seek a continuous improvement of standards.

A forerunner of the real thing?

This question is the most difficult as well as perhaps the most important to try to answer. There is no doubt that the hope of many trade union – officials and maybe some European Commission policy makers – is that 'soft' regulation will lead to 'hard' regulation at the EU level. At the very least, it might be thought, 'soft' regulation is establishing the principle of employment regulation at the EU level. There must also be a greater chance that the habit of negotiation is catching – the more established the working relationship between the parties becomes, the more likely are the prospects of 'hard' regulation. Learning to walk before learning to run is an appropriate metaphor.

Just as co-ordinated bargaining does not necessarily lead to collective bargaining, however (for further details, see Sisson and Marginson, 2001), so too 'soft' regulation is not guaranteed to result in 'hard' regulation. The barriers to 'hard' regulation, above all at EU levels, will remain formidable. Indeed, if anything, they will grow with enlargement – it would need a considerable shift of power from national governments to change the basic parameters within which both dimensions of the collective action problem (horizontal and vertical) have to be worked out. The signs are that the European Commission's Directorate General for Employment and Social Affairs has already switched the emphasis from industrial citizenship and social rights to modernising the workforce. Furthermore, the habit of negotiation may have the opposite result to the one that supporters of 'hard' regulation expect. In other words, it may serve to reinforce 'soft' regulation at the expense of 'hard'. 'Soft' regulation, as has been argued above, makes it possible to widen the coverage of collective bargaining as well as to involve a much larger group of participants. Other than in specific instances, where there is mutual advantage in the parties, 'hard' regulation may come to be the exception rather than the rule.

4. CONCLUSION AND IMPLICATIONS

In the light of this analysis, it is difficult to escape the conclusion that, whatever critics may think, 'soft' regulation is here to stay. This is above all true of the cross-national dimensions. In Dølvik's words (2000: 72): 'What we can expect is probably a continuation of the tendency to restrict the EU role to providing framework regulations that define broad objectives, minimum standards and procedures, while allowing considerable leeway for flexible implementation by national governments and the social partners'. 'Soft' regulation helps to deal with the complexity and the bargaining constraints of sovereignty. Those looking for a vertically integrated European system of collective bargaining along the lines of national systems may be unhappy with this conclusion. They should not be surprised, however. They have to ask themselves how a European system was otherwise going to emerge. It may be logical to think that this could be by design. This was never a serious proposition, however, given the massive constraints. As Falkner (1998: 153-4) observes 'Because the EC is a 'latecomer' which co-exists with historically grown and differentiated social and labour law systems it would be questionable to expect it to simply replace or copy them'. It is important to remember too that no national system has been designed: all have been a matter of compromise over many years.

If this is to be the way forward, there are two main sets of implications. It is with these that our closing section is concerned.

Towards a more coherent EU framework

In view of the hostility of many governments and the contradictory positions of the social partners, EU policy makers have understandably let a thousand flowers bloom so far as social regulation is concerned. Sooner or later, however, greater systematisation will be needed if only to avoid unnecessary waste of time and maybe even conflicting overlaps. In practice, this means paying greater attention to the key issues at EU levels.

The coverage of EU regulation.

Here the analysis has two controversial implications. The first is effectively a re-statement of the overall conclusion. Much of the controversy about the coverage

of EU regulation is misplaced and reflects the fact that people are thinking in terms of 'hard' regulation. The implication of this analysis is that it is unrealistic to expect 'hard' regulation at EU levels. Indeed, the prospects for such regulation look even more remote in the future. The difficulties of reaching agreement were substantial enough with the original six, let alone the present 15 member countries. They are likely to be even greater if and when the EU expands to embrace many more countries over the next decade.

The second implication is equally controversial. If the practical reality is that EU regulation is likely to be essentially 'soft' rather than 'hard', much of the opposition to extending its coverage to encompass a comprehensive framework loses its validity. Indeed, there are strong grounds for extending the current 'patchwork of minimum standards' to achieve a 'homogeneous European social model' (Keller, 2000: 45), both to encourage the modernisation of industrial relations and to avoid the grosser forms of undercutting and social dumping.

The levels issue

Accepting that the scope for EU regulation is likely to be essentially 'soft' rather than 'hard' also enables a much more meaningful discussion about the competences of the different levels of EU activity, which is another issue that bedevils further development. Each of the three main levels has its own complementary rather than competing competence. It is not a question, however, of a vertically integrated hierarchical system, as commentators such as Jacobi (1998) have advocated, but of a horizontally co-ordinated one/multiple or multi-layered system. Arguably, the role of the EU cross-sector agreement is to set a basic or minimum framework of 'soft' regulation to be completed at national level or national sector level, depending on country. The role of the EU sector level is to elaborate a framework on sector-specific matters, for example training and aspects of health and safety, and to co-ordinate the outcomes of the national sector level negotiations. The role of the Euro-company level is to set a company-wide basic or minimum framework of 'soft' regulation and to co-ordinate the outcomes at national company level. In the latter two cases, the co-ordination could be unilateral or collaborative, depending on the issue (Sisson and Marginson, 2001). Of course, there may be circumstances where the social

partners in specific sectors or companies want to introduce a vertically integrated hierarchical system. These are likely to be the exceptions rather than the rule, however.

The form of soft regulation

Moreover, much remains to be played for in terms of the form that future 'soft' regulation might take. Returning to our earlier argument, the degree of 'softness' of different forms of soft regulation varies, and – as in the case of framework agreements – regulation can combine both 'soft' and 'hard' dimensions. There is considerable difference, for instance, between on the one hand, those joint texts adopted by the social partners at sector or company levels which elaborate a set of principles but which have no further consequences for constituent organisations at national, regional and local levels and on the other hand, those whose express intention is to 'incite' negotiations on the matter in questions at other (national and local) levels within the sector and company and which also establish mechanisms to monitor the implementation of the text at these other levels. The contrast is even greater with a framework agreement which establishes a set of principles or minimum standards which are binding on the parties at other (national and local) levels – the hard dimension – but within which employers and trade unions at national and local levels within the sector or company have scope to fashion their own solutions – the soft dimension. Similar arguments can be made about the form of the open-ended co-ordination mechanisms on which soft regulations are coming to rely for implementation. Here, for example, the nature and quantifiably or the benchmarks utilised in peer group review processes can vary considerably in terms of the transparency required and hence their potential to be the focus of 'moral-suasion'.

Continuing roles for national systems

The principle of subsidiarity has gained widespread support, most obviously at the international level, where it has been enshrined in the Treaty of Amsterdam. In the words of the European Commission's Directorate-General for Education and Culture,

> The EU does not deal with European employment and social policy on its own, nor does it bear sole responsibility for it. Social responsibility is a core responsibility of the Member States. In accordance with the principle of subsidiarity, Europe deals only with matters where an EU solution makes more sense. So far, the EU has laid down only minimum standards and minimum rights. Member States can therefore adopt rules and regulations that go further than European social provisions (European Commission. 2000b: 3-4).

The logic of the analysis points to the same conclusion as the European Commission's. Indeed, one can go further. National systems are going to remain the dominant force for the foreseeable future. If so, there are important implications of the analysis here too.

Turning 'soft' into 'hard' regulation

It is clear that 'soft' regulation has to be turned into 'hard' somewhere. Otherwise, it runs the risk of remaining simply a statement of intent. As Wedderburn (1997: 11) observes, 'Most systems with fundamental labour rights build them on the hard rock of constitutional principle or legislative provision or even tough judges; it is on that fundament that they then erect the softer mixture of consultation and collective bargaining'. If 'subsidiarity' is to mean anything positive, it follows that the prime responsibility for turning 'soft' EU frameworks and 'agreements' into 'hard' regulation rests with member states.

'Organised decentralisation'

Patently, there is a growing tendency within national systems across Europe to transfer issues for implementation to the company and the workplace. There nonetheless remains a fundamentally important role for an inclusive structure of multi-employer bargaining at higher levels in setting the course of direction as well as establishing minimum standards, as Traxler (1998) has argued. Otherwise there is a danger of fragmentation and disintegration, as the experience of the UK exemplifies. Critically, too, as UK experience also confirms, once such agreements have gone, governments no longer have the option of looking to the social partners to assume a significant measure of responsibility for employment regulation of either the 'soft' or 'hard' variety. If they need to regulate, either to fulfil their domestic agenda or to implement EU directives, they

have little alternative but to follow the legislative route, which is likely to diminish the legitimacy of the outcomes. In practice, therefore, the best way of nurturing an inclusive structure – and, indeed, extending it to the emerging service sectors – is to turn 'soft' EU frameworks and 'agreements' into 'hard' regulation via collective bargaining either at national or sector levels.

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FIGURE 1 MAIN DEVELOPMENTS IN EU LABOUR LAW

Stage 1 the 1960s and early 1970s	The instruments establishing and reinforcing freedom of movement for workers, and the co-ordination of social security schemes for migrant workers, occupied the attention of the European social legislature until the early *1970s*. The Treaty of Rome contained a chapter on freedom of movement for workers, Articles 48 ff. (new article 39 ff) for freedom of movement, and Article 51 (new article 42) for social security for migrant workers). In 1972, the basic legal framework for achieving these aims was in place. It was subsequently to be considerably developed and reinforced by the case law of the Court of Justice of the European Communities. It also included a social chapter (Articles 119 ff.) which made no provision for legislative interventions.
Stage 2 the second half of the 1970s	This period is characterised by the adoption of the first directives on labour law, equal opportunities for women and men, and health and safety at work. The institutional framework has remained unchanged, but a number of events led the European legislature to act: for example, the oil crisis and the first major industrial restructuring exercises (the first labour law directive deals with collective redundancies) and the discovery, in the mid-1970s, of the carcinogenic effects of vinyl chloride monomer, a substance used in the plastics industry. These provisions were based on Article 100 of the Treaty, which enabled the Council to adopt unanimously directives for the approximation of such national provisions as affect the establishment or functioning of the Common market, and on Article 235 c "for equal Opportunities for women" and men.
Stage 3 the 1980s	This period enabled the progress achieved in relation to equal opportunities for women and men and health and safety at work to be consolidated. A framework directive adopted in 1980, defining a strategy for dealing with all physical, chemical and biological agents at work, was followed by a series of specific directives. The Single European Act strengthened the legal basis for health and safety provisions. The first indent of Article 137(1) (ex Article 118a of the EC Treaty) enabled the adoption by qualified maturity of directives laying down minimum requirements for safety and health at work. The other significant legal innovation in the Single Act in the social field was that the social dialogue was recognised at European level (Article 118b - new Article 139).
Stage 4 1990 – 93	The signing in 1989 of the Community Charter of the Fundamental Social Rights of Workers was a milestone in the development of social policy. A number of initiatives followed, some of them legislative. The action programme based on the Charter led to the adoption of 15 health and safety directives, one equal opportunities directive and four labour law directives. However, the experience of this second action programme showed the need for a stronger legal basis for social policy. The entry into force of the Maastricht Treaty and, in particular, its social protocol (currently Articles 136 ff.) extended the use of qualified majority voting beyond health and safety and defined the role of the social partners at Community level.
Stage 5 1994-99	The Social Protocol attached to the Maastricht Treaty provides an active role for collective bargaining. It enables the social partners to make a direct contribution to the production of Community social legislation. On three occasions, (parental leave, part-time work and fixed-term contracts), the directives have implemented agreements between the social partners at European level. The Protocol also establishes a more favourable political, institutional and legal context and enables proposals pending for the action programme linked to the Social Charter to be followed up
Stage 6 since 1999	The Treaty of Amsterdam consolidates and significantly reinforces the institutional framework and instruments of Community social policy. It ends the UK opt-out from the Social Protocol and moves Europe forward in four areas: employment, combating discrimination, equal opportunities for men and women, and the role of the social partners (Articles 3, 13, employment chapter, 137, 138 and 141). It enables the European Parliament to 'increase its involvement (co-decision).

Source: European Commission (2000a: 25)

FIGURE 2 THE RESULTS OF THE CROSS-INDUSTRY SOCIAL DIALOGUE

6 November 1986	Joint opinion on the co-operative growth strategy for more employment
6 March 1987	Joint opinion concerning training and motivation, and information and consultation
26 November 1987	Joint opinion on Annual Economic Report 1987/88
13 February 1990	Joint opinion on the creation of a European occupational and geographical mobility area and improving the operation of the labour market in Europe
19 June 1990	Joint opinion on education and training
10 January 1991	Joint opinion on new technologies, work organisation and adaptability of the labour market
5 April 1991	Joint opinion on the transition from school to adult and working life
31 October 1991	Agreement on the role of the social partners in developing the Community social dimension
20 December 1991	Joint opinion on ways of facilitating the broadest possible effective access to training opportunities
3 July 1992	Joint opinion on a renewed co-operative growth strategy for more employment
3 July 1992	Joint statement on the future of the social dialogue
13 October 1992	Joint opinion on vocational qualifications and certification
June 1993	Joint recommendation on the functioning of interprofessional advisory committees
28 July 1993	Joint opinion on the future role and action of the Community in the field of education and training including the role of the social partners
29 October 1993	Proposals by the social partners for implementation of the agreement annexed to the protocol on social policy of the Treaty on European Union
3 December 1993	Joint opinion on women and training
5 December 1993	Joint opinion on the framework for the broad economic policy guidelines
8 November 1994	Joint publication: 'Broad lines of the White Paper on growth, competitiveness and employment in the fields of education and training and responses to the. joint opinions'
4 April 1995	Joint opinion on the contribution of vocational training to combating unemployment and reabsorbing the unemployed into the labour market in the light of the new situation created by the White Paper
16 May 1995	Joint opinion on the social partners' guidelines for turning recovery into a sustained and job-creation growth process
21 October 1995	Joint declaration on the prevention of racial discrimination and xenophobia and promotion of equal treatment at the work lace
21 October 1995	Joint declaration of the European social partners to the Madrid European Council on the employment policy arising from the Essen European Council
14 December 1995	Framework agreement on parental leave
29 November 1996	Joint declaration on Action for employment: a confidence act
6 June 1997	Framework agreement on part-time work
13 November 1997	Joint contribution of the social partners to the Luxembourg Employment summit
17 October 1998	Joint opinion on the draft decision establishing the second phase of the Leonardo da Vinci programme
9 December 1998	1999 Employment guidelines – joint declaration of the social partners to the Vienna European Council

9 December 1998	Joint opinion on the reform of the Standing committee on Employment
18 March 1999	Framework agreement on fixed-duration employment contracts
18 March 1999	Joint dec1atation for the Warsaw Conference on enlargement
19 May 1999	Declaration of the European social partners on the employment of disabled people
2 June 1999	Declaration of the social partners to the Cologne European Council

Source: European Commission (2000a: 20)

FIGURE 3 POSSIBLE CONTENTS OF PACTS FOR EMPLOYMENT AND COMPETITIVENESS (PECS)

- guarantees of employment and/or no compulsory redundancy (open-ended or specific period)
- investment for particular establishments
- transformation of precarious into more stable jobs.
- additional employment for specific groups (e.g. young people, long-term unemployed)
- the relocation of the workforce within the company
- the introduction of 'work foundations' to improve the employment prospects of redundant workers

- reduction in pay levels and associated benefits,
  lower starter rates for new employees
- commitments to moderate pay demands
- increases linked to key indicators such as prices, productivity, exchange rates.
- share ownership

- temporary or long-term reduction in the working week
- greater variability in and extension of working hours without overtime premium
- the increased use of part-time work
- extension of operating hours (example weekend work)

- conditions for use of fixed-term contracts, temporary work and contracting out
- new forms of work organisation (example team work)
- training and development

FIGURE 4 CHANGING EMPHASES IN INDUSTRIAL RELATIONS

The 'old' industrial relations	**The 'new' industrial relations**
Key assumptions	
• stability	• change
• conflict	• co-operation
• social justice	• continuous improvement
• standardisation	• diversity
• a predominant level of activity	• multiple levels of activity
• centralisation	• decentralisation (subsidiarity)
Subject matter	
• claims/grievances	• information/benchmarking
• rights/obligations	• standards/targets
• pay and conditions	• employment and competitiveness
• inputs	• outputs
Processes	
• distributive bargaining	• integrative bargaining
• agreement making	• social dialogue
• law-making	• target-setting
• vertical integration	• horizontal co-ordination
• enforcement/sanctions	• monitoring/learning